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PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/023,254
		Filing Date	17 Dec. 2001
		First Named Inventor	Alex. G. SZYNALSKI
		Group Art Unit	3712
		Examiner Name	Kurt FERNSTROM, Esq.
Total Number of Pages in This Submission		Attorney Docket Number	A. Goen Seminars

### ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input checked="" type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Photocopies of Order, Granting Reexamination and Rule 530(b) Statement
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
<p>Remarks: THIS IS A LITIGATION RELATED APPLICATION. PLEASE PROCESS IMMEDIATELY. Thank you.</p>		

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

TECHNOLOGY CENTER R3700

Firm or Individual name	Pharmaceutical Patent Attorneys, LLC 55 Madison Avenue, 4th floor, Morristown NJ 07960-7397 USA
Signature	
Date	See below date

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date:  see below date

Typed or printed name	Mark POHL, Reg. No. 35,325
Signature	
Date	29 Dec. 2003

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



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## TRANSMITTAL FORM

*(to be used for all correspondence after initial filing)*

		Application Number	90/006,704
		Filing Date	30 June 2003
		First Named Inventor	Alex. G. SZYNALSKI
		Group Art Unit	3712
		Examiner Name	Derris H. BANKS
Total Number of Pages in This Submission		Attorney Docket Number	A. Goen Seminars

### ENCLOSURES (check all that apply)

- Fee Transmittal Form
- Fee Attached
- Amendment / Reply
  - After Final
  - Affidavits/declaration(s)
- Extension of Time Request
- Express Abandonment Request
- Information Disclosure Statement
- Certified Copy of Priority Document(s)
- Response to Missing Parts/ Incomplete Application
- Response to Missing Parts under 37 CFR 1.52 or 1.53

- Assignment Papers (for an Application)
- Drawing(s)
- Licensing-related Papers
- Petition
- Petition to Convert to a Provisional Application
- Power of Attorney, Revocation Change of Correspondence Address
- Terminal Disclaimer
- Request for Refund
- CD, Number of CD(s) \_\_\_\_\_

Remarks

- After Allowance Communication to Group
- Appeal Communication to Board of Appeals and Interferences
- Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- Proprietary Information
- Status Letter
- Other Enclosure(s) (please identify below):

Statement Under Rule 550(c)

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Pharmaceutical Patent Attorneys, LLC Pohl & Assoc.
Signature	
Date	See below date

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Signature	
Date 6 Oct. 2003	

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PTO/SB/97 (08-00)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## Certificate of Transmission under 37 CFR 1.8

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United States Patent and Trademark Office

on 29 Dec. 2003

Date

Signature

Mark POHL, Reg. No. 35,325

Typed or printed name of person signing Certificate

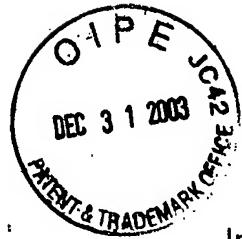
Note: Each paper must have its own certificate of transmission, or this certificate must identify  
each submitted paper.

The submitted papers are enumerated on the enclosed Transmittal Form,  
PTO Form SB/21.

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TECHNOLOGY CENTER R3700



IN THE UNITED STATES PATENT OFFICE

Inventor : Alexander Goen SZYNALSKI  
Serial No. : 10/023,254  
Patent No. :  
Filing Date :  
Title : *Stop Smoking Methods and Compositions*  
Group Art : 3712  
Examiner : Kurt FERNSTROM, Esq.

5

Commissioner of Patents  
Post Office Box 1450  
Mail Stop: Amendment / LITIGATION  
Alexandria, VA 22313-1450  
10 Facsimile (703) 746-3221  
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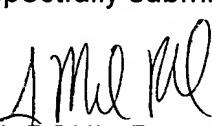
COMMUNICATION

15 This application is a Continuation-in-Part of parent application 09/427,447. The parent application is now subject to reissue application Serial No. 10/613,590 and reexamination number 90/006,704, now merged. To assure consistency among these various proceedings, enclosed please find copies of:

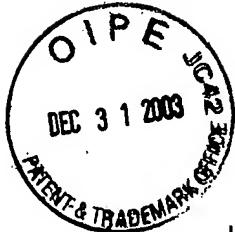
20 ✓ The 27 August 2003 ORDER GRANTING REEXAMINATION, and  
✓ The 6 October 2003 RULE 530(B) OWNER'S STATEMENT.

Please feel free to telephone me if you have any questions.

Respectfully submitted,

25   
Mark POHL, Reg. No. 35,325  
+1 (973) 984-0076  
Mark.Pohl@LicensingLaw.Net

30 29 December 2003  
Pharmaceutical Patent Attorneys LLC  
55 Madison Avenue, 4th floor  
Attn : Mark POHL (P 4014)  
Morristown, NJ 07960-7397 USA  
35 Enclosures



IN THE UNITED STATES PATENT OFFICE

Inventor : SZYNALSKI, Alex. Goen  
Serial No. : 90/006,704  
Patent No. :  
Filing Date : 30 June 2003  
Title : Stop Smoking Methods & Compositions  
Group Art : 3712  
Examiner : Derris H. BANKS, Esq.

5      Commissioner of Patents  
Post Office Box 1450  
Mail Stop: Reexamination / Litigation  
Alexandria, VA 22313-1450

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Rule 530(b) OWNER'S STATEMENT

Many thanks for granting the REQUEST FOR REEXAMINATION. The Owner files this statement not to object to that ORDER, but to clarify certain statements made there, so that  
15      reexamination may conclude expeditiously.

Missing Items

The ORDER says the REQUEST FOR REEXAMINATION fails to include "An identification of every claim for which reexamination is requested." See ORDER at 2, ¶ (2) (27 Aug. 20 2003). The REQUEST, however, includes, Form PTO-1465, which says, at ¶ 9, "Reexamination of claims 1-8 is requested." The REQUEST also includes ATTACHMENT TO FORM PTO-1465, which says, at page 1, "Requestor respectfully requests reexamination of each of the eight issued claims." Thus, it is believed the REQUEST FOR REEXAMINATION includes an identification of every claim for which reexamination is requested.

25      Similarly, the ORDER says the REQUEST FOR REEXAMINATION fails to include "a detailed explanation of the pertinency and manner of applying the cited prior art." See ORDER at 2, ¶ (2) (27 Aug. 2003). The REQUEST, however, includes ATTACHMENT TO FORM PTO-1465, which says, at page 2, "a detailed explanation of the pertinence and manner of applying the cited art to the claims - applying it in the light least favorable to the patent 30      owner - is believed recited in the accused infringer's ANSWER.... A true and correct copy of the ANSWER is included in the [I.D.S.] included here." Thus, while the Examiner may not agree with the allegations raised in the Answer, the Owner believes the Request includes this information.

Similarly, the ORDER says the REQUEST FOR REEXAMINATION fails to include "a copy of every patent or printed publication relied upon or referred to." See ORDER at 2, ¶ (3) (27 Aug. 2003). The REQUEST, however, includes an approximately 16-page long INFORMATION DISCLOSURE STATEMENT, together with **approximately 3,400 pages** 5 (perhaps two Bankers' boxes full) of cited art. The carton containing this material was received in good order by the USPTO; if this material has since been mislaid, please feel free to contact me and I can send you replacement copies.

### The Goen Workbook

10 As clarification, the Goen Advertisement/Workbook is not an "advertisement." Rather, it is a workbook distributed to customers who attend a stop-smoking seminar. The ORDER apparently relies on factual assertions made in the accused infringer's RULE 501 PRIOR ART SUBMISSION. These assertions are, however, incorrect. I discuss two: using stimulants for weight-control, and providing the anti-smoking drug lobelia.

15 The Goen Workbook Teaches  
Avoiding Using Stimulants *at all*  
(for Weight Control or otherwise)  
The ORDER says the Goen Workbook at pages 6-7 "provides to said tobacco  
20 smoker at least one weight control product, in an amount effective to aid in weight control, where the weight control product includes at least one stimulant." ORDER at 4, ¶ (D). The Goen Workbook at pages 6-7 (copies attached) does not provide at least one weight control product. The Goen Workbook do not even mention "weight control product." To the contrary, the workbook discusses the importance of adequate exercise and proper  
25 diet - but admonishes *against* using stimulants (e.g., caffeine). The workbook at pages 6-7 says:

"Cut back on drinking coffee and other caffeinated beverages. ... Try drinking Smokers Tea or some other decaffeinated beverage. Drinking a hot tea provides the same psychological effect as drinking hot coffee."

30 "Drink 8 glasses of non-caloric liquids a day - drink water with lemon, seltzer, herbal tea, etc."

"Avoid beverages with caffeine - tea, colas, coffee, hot chocolate"

The one concession the workbook makes to potentially using a stimulant is to drink coffee, yet make it difficult and inconvenient: "If you must have them, drink tea or coffee out of a juice glass using a straw." The workbook thus does not teach using a stimulant to control weight. To the contrary, the workbook teaches controlling weight with proper diet  
5 and exercise - *avoiding* stimulants at all.

Neither The Goen Workbook Nor  
The Accompanying Seminar  
Provided A Stop Smoking Drug

10 The ORDER says the Goen Workbook at page 6 "provides to said tobacco smoker an antismoking drug." ORDER at 4, ¶ (C). Goen Workbook does not in fact provide any antismoking drug. To the contrary, the Goen Workbook shows that neither the workbook itself (the printed document), nor the in-person seminar where the workbook was used, provided any antismoking drug. Rather, the workbook says that the seminar *did not* provide this - the seminar attendee needed to get antismoking drug somewhere else.  
15 Thus, this document qualifies as art under 35 U.S.C. § 103, but not under 35 U.S.C. § 102.

20 As an aside, during prosecution of the issued patent, the Examiner required the claims to be narrowed to require an amount "effective to stop smoking." Here, there is no evidence regarding the amount of lobelia present in Traditional Medicinal™ Smoker's Tea. Evidence regarding the amount of lobelia actually present is important, because around the time this workbook was used, the United States Food & Drug Administration announced an intent to ban lobelia, then banned lobelia, and, more recently, rescinded the ban. Thus, it is possible that the manufacturers of Traditional Medicinal™ Smoker's  
25 Tea, to avoid FDA enforcement action, kept the amount of lobelia in their product near zero - thus not an amount "effective to stop smoking."

The Gorayeb Workbook

The Owner agrees that the Gorayeb workbook provides a non-conditioning educational program and a hypnosis program. See ORDER at page 5, ¶¶ (A), (B).

5           Weight Control Substance

The ORDER at page 5, ¶ (D) says the Gorayeb workbook at pages 000004 and 000009 (copies enclosed) provides a “weight control product include[ing] at least one stimulant in an amount effective to aid in weight control.” The Owner would like to agree, because this PTO finding would make it easier for to prove that Gorayeb infringes the 10 patent. The Owner questions, however, whether Gorayeb can in fact be read fairly to teach this (*n.b.*: Gorayeb page 000004 teaches *avoiding* caffeine). Reconsideration is thus requested.

Antismoking Drug

15           The ORDER at page 5, ¶ (C) says the Gorayeb workbook at page 00009 (copy enclosed) provides an “antismoking drug” within the meaning of the claims. The term “antismoking drug” was defined during prosecution of the issued patent (see AMENDMENT (19 Sept. 2001), copy enclosed) as lobelia or a legal equivalent of lobelia. That means, for example, a substance which performs the same function as lobelia (reduces anxiety) 20 in the same way (antidepressant or anxiolytic activity) to produce the same result (reduces craving for nicotine)). Here, whatever the many benefits of a multivitamin (such as the Cal/Mag/vitamin-B complex discussed in Gorayeb page 000009), multivitamins are not generally considered antidepressants. Thus, this document qualifies as art under 35 U.S.C. § 103 (if combined with a reference teaching an antidepressant such as lobelia), 25 but not under 35 U.S.C. § 102.

Summary

In the interest of expediency, the Requestor (who is also the patent owner) hereby waives its opportunity to file a Reply under Rule 535; accordingly, please forward this case at your earliest convenience to the Office of Legal Affairs for a determination of whether this reexamination case should be merged with, or stayed pending resolution of, co-pending Reissue Application Serial No. 10/613,590.

5

Please feel free to telephone me if you have any questions.

Respectfully submitted,

10   
Mark POHL, Reg. No. 35,325

15  +1 (973) 984-0076

 [Mark.Pohl@LicensingLaw.Net](mailto:Mark.Pohl@LicensingLaw.Net)

15 5 October 2003

20 Pharmaceutical Patent Attorneys LLC  
55 Madison Avenue, 4th floor  
Attn : Mark POHL (P 4014)  
Morristown, NJ 07960-7397 USA

SD:\AA Office\Forms - Patent\Rule 530(b) Statement.doc



JUL 29. 2003 2:40PM

FOX&FOX LLP

NO. 149

P. 33/58

## SMOKING CESSATION SUGGESTIONS

- Listen to the "Smoking Cessation" tape every day for 30 days.
- Carry a non-food item such as a swizzle stick or a low calorie food such as celery or carrot sticks. Use these to gratify any oral habit that has been developed by the conditioned response of putting your hand to your mouth 250 times a day, as if you were a one pack a day smoker.
- Acquire the smoker's tea containing the herb lobelia, which aids any withdrawal that some may experience. Lobelia is a natural herb that tricks the body into thinking it is nicotine, but it does not have the side effects. The brand we recommend is Traditional Medicinal and is called "Smokers Tea". Most good health food stores will carry this product. Check the yellow pages for stores in your area.
- Cut back on drinking coffee and other caffeinated beverages. Sometimes the stress or anxiety that quitters experience is due to the physiological effects of caffeine on the nervous system and not due to withdrawal from nicotine. Try drinking the Smokers Tea or some other warm decaffeinated beverage. Drinking a hot tea provides the same psychological effect as drinking hot coffee.
- Engage in some form of light exercise. Not only will it help clear the body of the toxins acquired through smoking, but it will also help release endorphins which relieve stress as well as making you feel good. Exercise will rapidly reverse the damage done to the body from smoking. If you have not engaged in exercise for a long time, or you have a weight problem or any other health problem, you should consult your physician before starting any regimen of exercise.
- Eat healthy, nourishing, non-processed foods and take a good vitamin supplement. Remember, the 200+ toxins in cigarette smoke have helped deplete the body of vitamins. 5 cigarettes can deplete all the vitamin C in the body! By eating a healthy diet, you will recover your health more quickly.

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### WHAT TO DO

JAN 05 2004

(Do this for at least the first week, preferably for the first 21 days) TECHNOLOGY CENTER R3700

- Eat 3 meals a day, including breakfast
- Have protein and complex carbohydrates with each meal
- Avoid sugar
- Drink 8 glasses of non-caloric liquids a day - drink water with lemon, seltzer, herbal tea, etc.

Keep a pitcher of water on your desk and you'll easily drink 8 glasses a day

- Between meals, drink fruit juices or eat a piece of fruit
- Take 500 mg of calcium and 1000 mg of magnesium
- Take a B-complex supplement, preferably one that contains Biotin
- Eat lots of fruits, vegetables and salads
- As soon as you finish eating, leave the table and go brush your teeth
- Use mouthwash whenever possible



## WHAT NOT TO DO

- Do not skip any meals; never miss breakfast
- Limit sugar intake - read packaging labels
- Avoid beverages with caffeine - tea, colas, coffee, hot chocolate
- If you must have them, drink tea or coffee out of a juice glass using a straw
- NO Alcohol

## WHY THIS ATTENTION TO FOOD; WHY THESE RECOMMENDATIONS

In the Physiologic Progression of Smoking we described the change in blood sugar levels caused by smoking and the physical and emotional response it has on the body.

If your blood sugar level gets low, you will either crave a cigarette or something sweet. In either case, it will boost your blood sugar level for 10 to 20 minutes and then cause a crash, triggering another urge for a cigarette or a sweet. By eating 3 meals a day, you will tend to have a stable blood sugar level, and this minimizes cigarette and eating urges. Eating protein with carbohydrates at breakfast sets the stage for stable blood sugar levels all through the day. Protein with complex carbohydrates stabilizes the blood sugar.

## HANDLING URGES

If you ever get a desire or craving for a cigarette:

1. Stop what you are doing
2. Snap a rubber band around your wrist
3. Write down what you were doing
4. Take 3 deep breaths to eliminate the desire to smoke

5. Physically get up and move, even if it's just to stand up
6. Do a stretch or two
7. Take another 3 deep breaths, and another 3 if necessary
7. Drink water, preferably with lemon
8. Get a breath of fresh air
9. Awareness technique - Look around the room and say, "Now I am aware of the chair, now I am aware of the lamp," -- continue making "Now" statements until the urge passes

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Something to know about urges and desires:

1. You don't have to fulfill them
2. If you do nothing, they will just go away and recur less frequently
3. Smoking doesn't end an urge, it just placates it and generates another urge in 15 to 30 minutes

DEC 31 2003

SCA2 EX

PATENT &amp; TRADEMARK OFFICE

STOP SMOKING REINFORCEMENT AIDS

Stop Smoking Tape.....	\$20.00	Chromium Picolinate.....	\$15.00
Stop Smoking Lozenges.....	\$20.00	Cal. Mag./B-Complex.....	\$10.00

**"RESOURCE" PACKAGE**

Stop Smoking Tape.....Stop Smoking Lozenges.....Cal. Mag./B-Complex.....Chromium Picolinate  
\$65.00

HYPNOSIS WEIGHT LOSS TAPES

Weight Loss Tape.....\$20.00

SPECIAL HYPNOSIS TAPES

Super Relaxation (experience deep physical and mental relaxation).....\$25.00  
Positive Changes (overcome self limiting behaviors).....\$25.00

Overcome Anxiety & Panic  
High Powered Sales Ability  
Eliminate Headaches & Migraines  
Freedom from Arthritic Pain

}  
1 @ \$15.00  
2 @ \$25.00  
3 @ \$30.00

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ALBUMSSUPER POWER PACK (11 Tapes)

Stop Smoking

Lose Weight Double Induction

Freedom from Insomnia

Freedom from Stress

Memory and Concentration

Super Relaxation

Increased Productivity

Release Pain with Hypnosis

Self Confidence

Creating Wealth &amp; Prosperity

Fantastic Value! \$79.99

Self Esteem

WEIGHT LOSS POWER PACK (10 Tapes)

(Includes Seven Hypnosis Tapes)

Lose Weight Double Induction  
Maintaining Your Ideal Weight  
I Am The Master of Myself

Image a Perfect Body  
Magnetic Personality

Motivation To Exercise  
Increased Vitality

Plus 3 Informational Tapes:

Nutrition &amp; Permanent Weight Loss Forever Slim Increase

Your Metabolism

\$79.99

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USING FOOD AS AN AID TO STOP SMOKING**WHAT TO DO** (Do this at least for the first week)

- \* Eat 3 meals a day, including breakfast
- \* Have protein and complex carbohydrates with each meal
- \* Avoid sugar
- \* Drink 8 glasses of non-caloric liquids a day - water with lemon, water, seltzer, herbal tea, etc. Keep a pitcher of water on your desk and you'll easily drink 8 glasses a day.
- \* Between meals drink fruit juices or eat a piece of fruit
- \* Eat plenty of protein - lean meat, fish, poultry, low fat cheese
- \* Increase your calcium/magnesium intake (2mg of calcium/1mg of magnesium)
- \* Take a B complex supplement, preferably one that contains Biotin
- \* Eats lots of fruits, vegetables and salads
- \* As soon as you finish eating, leave the table and go brush your teeth
- \* When possible, use a mouthwash

**WHAT NOT TO DO**

- \* Do not skip any meals, never miss breakfast
- \* Limit sugar intake - read packaging labels
- \* Avoid beverages with caffeine - tea, colas, coffee, chocolate
- \* Avoid alcohol

**WHY THIS ATTENTION TO FOOD, WHY THESE RECOMMENDATIONS**

If your blood sugar level gets low, you will crave a cigarette or something sweet, either of which will boost your sugar level for 10 to 20 minutes and then cause a crash, triggering another urge for a cigarette or a sweet. By eating 3 meals a day, you will tend to have a stable blood sugar level, and this will minimize any cigarette or eating urges. Protein with carbohydrates at breakfast sets the stage for stable sugar levels all through the day.

Avoiding sugar/sweets eliminates the blood sugar surge/crash cycle and reduces cigarette craving. Drinking 8 glasses of non-caffeine liquid helps your body clear out the nicotine, helps you feel full all day, so you don't overeat or snack, and MOST IMPORTANTLY, acts as a replacement for smoking. Fruit and fruit juices help maintain blood sugar levels. Caffeine promotes irritability, and alcohol, in addition to associations with smoking, has a very high sugar content and can make you forget how important being a non-smoker is to you.

Increase your calcium/magnesium intake the first week. Drink 3 glasses of low fat milk per day or eat cheese or yogurt, or take a calcium supplement. While nicotine is being flushed from your body, so is calcium. Calcium has a calming and relaxing effect on your body and will minimize any tendency toward irritability. B vitamins help to minimize the effects of stress and reduce mood changes.

**IF ANY OF THESE SUGGESTIONS CONFLICT WITH INSTRUCTIONS  
FROM YOUR PHYSICIAN, CONSULT YOUR PHYSICIAN AND LET HIM  
ADVISE YOU**

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United States Patent and Trademark Office  
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P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/006,704	06/30/2003	6431874	A. Goen Seminars	9268

22925 7590 08/27/2003  
PHARMACEUTICAL PATENT ATTORNEYS, POHL & ASSOC.  
55 MADISON AVENUE, 4TH FLOOR  
ATTN: MARK POHL (P 4014)  
MORRISTOWN, NJ 07960-6397

EXAMINER	
A. Goen Seminars	
ART UNIT	PAPER NUMBER
3712	5

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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TECHNOLOGY CENTER 4000



Order Granting / Denying Request For  
Ex Parte Reexamination

Contr. I No.	Patent Under Reexamination
90/006,704	6431874
Examiner	Art Unit
Derris Banks	3712

--THE MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 30 June 2003 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO-1449, c) Other: \_\_\_\_\_

1.  The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the date of service of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2.  The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a)  by Treasury check or,
- b)  by credit to Deposit Account No. \_\_\_\_\_, or
- c)  by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

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cc: Requester ( if third party requester )

U.S. Patent and Trademark Office  
PTOL-471 (Rev. 04-01)

Office Action in *Ex Parte* Reexamination

Part of Paper No. 5

Reexamination

A substantial new question of patentability affecting at least claims 1-7 of United States Patent Number 6,431,874 is raised by the request for reexamination.

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extension of time in reexamination proceedings are provided for in 37 CFR 1.550(c).

Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under 37 CFR 1.501.

The request for reexamination has failed to include the following parts 37CFR 1.510(b)(1)-(3):

- (1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications.
- (2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. Though not appropriate in this instance, the party requesting reexamination may also point how claims distinguish over cited prior art.
- (3) A copy of every patent or printed publication relied upon or referred to in paragraph (1) and (2) of the above must be accompanied by an English language

translation of all necessary and pertinent parts of any non-English language patent or printed publication.

The determination whether or not "a substantial new question of patentability" is present can be based upon any prior art patents or printed publications. Section 303(a) of the statute and CFR 1.515(a) provide that the determination on a request will be made "with or without consideration of other patents or printed publication," i.e., other than those relied upon in the request. The examiner is not limited in making the determination to the patents and printed publications relied on in the request. The examiner can find "a substantial new question of patentability" based upon the prior art patents or printed publications relied on in the request, a combination of the prior art relied on in the request and other prior art found elsewhere, or based entirely on different patents or printed publications. MPEP 2244

Therefore, the basis of determination of "a substantial new question of patentability" has been based on printed publications cited in the patented file. CFR 1.501 The printed publications are as follows:

- (1) Goen "Stop Smoking with Hypnosis in Just 2 Hours" advertisement © 1995 (Goen Advertisement)
- (2) Goen Seminars Stop Smoking Workbook © Goen Seminars 1995 (Goen Workbook)
- (3) Gorayeb "Stop Smoking with Hypnosis in Just 2 Hours" advertisement © 1995 (Gorayeb Advertisement)
- (4) Gorayeb Seminars Stop Smoking Workbook © Gorayeb Seminars, Inc. 1996 (Gorayeb Workbook)

In consideration of Claims 1-8 of the Szymalski patent, Goen © Advertisement/Workbook raises a substantial new question of patentability. As stated below, Goen

Art Unit: 3712

Advertisement/Workbook © 1995 teaches a method for helping a tobacco smoker to stop smoking, said method comprising the steps of:

- (A) providing to a tobacco smoker a non-conditioning, educational program (i.e., pre-recorded media, pg. 6) to educate said tobacco smoker's conscious mind (Note: The education of patentee's conscious mind as disclosed at column 4, lines 6-10 of patentee's specification is equivalent to the disclosed reference, as stated below), said educational program including education both on the disadvantages of smoking (pg. 3) and on conscious techniques (pg. 6) to stop smoking (Note: Patentee has no support in the specification for the use of the term "non-conditioning", therefore patentable weight has not been provided to said term),
- (B) providing to said tobacco smoker at least one hypnosis program (pgs. 2 & 3) to train said tobacco smoker's subconscious mind to discourage said tobacco smoker from performing smoking behavior, and
- (C) providing to said tobacco smoker an antismoking drug (pg. 6: Lobelia, aka Smoker's Tea) in an amount effective to aid in the reduction or cessation of said tobacco smoker's craving to smoke tobacco,  
such that said tobacco smoker can be helped to stop smoking (pg. 7).
- (D) providing to said tobacco smoker, at least one weight-control product, in an amount effective to aid in weight control, where the weight control product includes at least one stimulant in an amount effective to aid in weight control (pgs. 6 & 7).

Accordingly, Goen © Advertisement/Workbook raises a substantial new question of patentability as to Claims 1-8, which question has not been decided in a previous examination of the Szynalski patent.

Art Unit: 3712

In consideration of Claims 1-8 of the Szymalski patent, Gorayeb © Advertisement/Workbook, Inc. raises a substantial new question of patentability. As stated below, Gorayeb Advertisement/Workbook © 1995, Inc. teaches a method for helping a tobacco smoker to stop smoking, said method comprising the steps of:

- (A) providing to a tobacco smoker a non-conditioning, educational program (i.e., pre-recorded media, pg. RG 000002 & 000009) to educate said tobacco smoker's conscious mind (Note: The education of patentee's conscious mind as disclosed at column 4, lines 6-10 of patentee's specification is equivalent to the disclosed reference, as stated below), said educational program including education both on the disadvantages of smoking (pg. 000003 & 000005) and on conscious techniques (pg. 000005 - 000007) to stop smoking (Note: Patentee has no support in the specification for the use of the term "non-conditioning", therefore patentable weight has not been provided to said term),
- (B) providing to said tobacco smoker at least one hypnosis program (pgs. 2 & 3) to train said tobacco smoker's subconscious mind to discourage said tobacco smoker from performing smoking behavior, and
- (C) providing to said tobacco smoker an antismoking drug (pg. 000009: Cal. Mg./B-Complex) in an amount effective to aid in the reduction or cession of said tobacco smoker's craving to smoke tobacco, such that said tobacco smoker can be helped to stop smoking (pgs. 000005 – 000008).
- (D) providing to said tobacco smoker, at least one weight-control product, in an amount effective to aid in weight control, where the weight control product includes at least one stimulant in an amount effective to aid in weight control (pgs. 000004 & 000009).

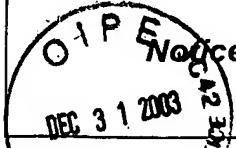
Art Unit: 3712

Accordingly, Gorayeb © Advertisement/Workbook raises a substantial new question of patentability as to Claims 1-8, which question has not been decided in a previous examination of the Szymalski patent.

Any inquiry concerning this communication should be directed to Derris Banks at telephone number 703-308-1745.



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

 <b>Notice of References Cited</b> <small>DEC 31 2003</small>		Application/Control No.	Applicant(s)/Patent Under Reexamination 90/006,704 6431874	
		Examiner	Art Unit	Derris Banks
<b>U.S. PATENT DOCUMENTS</b>				

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-			
B	US-			
C	US-			
D	US-			
E	US-			
F	US-			<b>RECEIVED</b>
G	US-			JAN 05 2004
H	US-			
I	US-			TECHNOLOGY CENTER
J	US-			
K	US-			
L	US-			
M	US-			

#### FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

#### NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)	
U	Goen "Stop Smoking with Hypnosis in Just 2 Hours" advertisement © 1995	
V	Goen Seminars Stop Smoking Workbook © Goen Seminars 1995	
W	Gorayeb "Stop Smoking with Hypnosis in Just 2 Hours" advertisement © 1995	
X	Gorayeb Seminars Stop Smoking Workbook © Gorayeb Seminars, Inc. 1996	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.